

August 2, 2013

Susan Hedman, Regional Administrator,
U.S. Environmental Protection Agency - Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Re: EPA's Proposed Reopening of Air Pollution Control Title V Permit for Veolia Environmental Services

Dear Administrator Hedman,

I am the General Manager at Veolia ES Technical Solutions, L.L.C.'s Sauget, Illinois facility. I appreciate your willingness to take time to meet with us on the issues discussed below. I am concerned about Region 5's deviations from a past administrations commitment and the proposed reopening of the Veolia's Title V Permit under the Clean Air Act. Specifically, I am writing to express Veolia's concern over three issues:

- 1) Region 5 breached an agreement with Veolia by requiring Veolia perform Comprehensive Performance Tests (CPT) in the fall of 2013;**
- 2) In reopening Veolia's Title V permit, Region 5 is unnecessarily placing Veolia at financial and compliance risks while expending taxpayers money with no increased benefit to the environment; and**
- 3) Region 5 has proposed permit terms and conditions in the reopening that are impossible or impractical to implement and go beyond what is reasonable and necessary to assure compliance with the Clean Air Act.**

Each issue is addressed in more detail below.

- 1) Region 5 breached an agreement with Veolia by requiring Veolia perform Comprehensive Performance Tests (CPT) in the fall of 2013.**

In mid-2008, the Director of the Air and Radiation Division had concerns about the existing metals testing data available for Veolia. She expressed those concerns to Veolia and her desire for an additional round of testing prior to the issuance of the September 2008 Title V Permit. Veolia had cost and timing concerns about performing the testing because such testing was not yet required by the regulations. In fact, the Air and Radiation Division Director stated, "I cannot force Veolia to conduct these metals tests early, however, I strongly recommend Veolia conduct them as it is in both Veolia and EPA's best interest to have the additional data." After a period of negotiations, EPA and Veolia ultimately reached an agreement whereby Veolia would perform the expedited metals testing at the Director's request and EPA would in turn—so long as the testing was properly conducted and the results were acceptable—allow the

results of the expedited metals testing to be used for compliance with the next required CPT.¹ This agreement ensured that Veolia would not experience the negative financial effect of having to perform two separate metals tests in close proximity to one another.

Further, the Director memorialized the EPA-Veolia agreement in an attachment to a Request for Information dated June 5, 2008. Paragraph 13 which was added to an earlier Request for Information specifically set forth the EPA-Veolia agreement that allowed Veolia to use the expedited metals testing data for the next required CPT:

13. Provided that the results of these performance tests result in data that meet quality assurance objectives such that the results demonstrate compliance with the applicable standards, are sufficient to establish the applicable OPLs under 40 C.F.R. § 63.1209, and meet all requirements of 40 C.F.R. § 63.1207 for conducting comprehensive performance tests (CPT), *these performance tests will serve as the mercury, SVM, and LVM portion of the CPT required between October 14, 2008, the compliance date for the standards set forth in 40 C.F.R. § 63.1219 (a) and (c), and October 14, 2009, the date by which Veolia is otherwise required to conduct a CPT on each incinerator.*

In fact, Veolia conducted its CPT in December of 2009 and all subsequent necessary confirmatory performance testing had been scheduled based upon that CPT commencement date. For example, Veolia submitted its confirmatory test plan on April 13, 2012; the plan was approved on May 25, 2012; and Veolia concluded testing pursuant to the plan on June 27, 2012. This schedule is consistent both with the EPA-Veolia Agreement and the applicable regulations for performing CPTs. Veolia was therefore surprised when EPA subsequently took the position that Veolia's next CPT testing needed to be commenced in the fall of 2013. Pursuant to Veolia's agreement with Region 5, Veolia continues to believe that its next CPT must be commenced in December of 2014, with a CPT Plan due to the EPA in December of 2013.

2) In reopening Veolia's Title V permit, Region 5 is unnecessarily placing Veolia at financial risk and expending taxpayers and Veolia's money with no increased benefit to the environment.

With Veolia's current five-year Title V permit set to expire on October 12th, 2013, EPA is hastily and unnecessarily pursuing a reopening as opposed to simply moving forward with a renewal of Veolia's Title V permit. During a meeting with EPA on June 5, 2013, EPA stated that its intention is not to require Veolia to implement permit conditions sought through the reopening during the pendency of an appeal of those conditions to the Seventh Circuit. However, prior statements and actions by EPA run counter to this intent and EPA refuses to take any actions to effectuate its intent.

In fact, the result of this reopening would be that Veolia could very well be required to comply with three different permits within one year: (1) the reopened permit as issued following the Environmental Appeal Board's final decision; (2) the reopened permit as enforced by the Seventh Circuit; and/or (3) the "new"

¹ Under the EPA-Veolia agreement, and pursuant to the applicable regulations, Veolia's CPT Plan was due in October of 2008, with the actual CPT testing to be commenced in October of 2009. Veolia submitted its CPT Plan on time in October of 2008; however, EPA subsequently granted Veolia an extension to perform the actual CPT testing, which was ultimately commenced in December of 2009.

permit issued to Veolia as a part of the regular Title V renewal process (which is running concurrently with the reopening). Each iteration of the permit could make it extremely difficult for Veolia to prove compliance while requiring Veolia to invest millions in significant capital improvements that could later be changed or made obsolete (or made totally unnecessary) by subsequent permit conditions. We believe Region 5's efforts are best focused on a renewal of Veolia's Title V permit, rather than forcing Veolia and taxpayers to pay for parallel Title V processes in the form of the Title V reopening occurring simultaneously with the Title V renewal process.

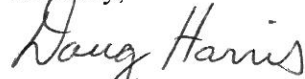
3) Region 5 has proposed permit terms and conditions in the reopening that are impossible or impractical to implement and go beyond what is reasonable and necessary to assure compliance with the Clean Air Act.

EPA proposes to modify Veolia's Title V permit by requiring the installation of a multi-metals continuous emissions monitoring system (CEMS). As Veolia has repeatedly stated to EPA, this technology has been proven not to work and the requirement is the first of its kind. At the time of the reopening, EPA abdicated its regulatory responsibility and relied upon representations made by an entity with a financial motive to overstate the capabilities of the technology to develop EPA's case for why the technology could not be rejected. As reflected through EPA's incomplete internal communications which were made a part of the administrative record in the reopening, EPA requested the sole distributor of commercially available multi-metals CEMS in the United States ("Distributor") to guide Region 5 through the maze of information necessary to build a scientifically defensible case for EPA to require the use of the CEMS at Veolia. However, that Distributor has now abandoned the technology and it appears the requirement is impossible to meet. Further, the technology could not be implemented, if ever, within the proposed timeframes even if such technology was available.

The most effective way to reduce air emissions is not through the changes contained in the proposed permit reopening but rather through the installation of proven and effective pollution control equipment. Veolia has offered and is committed to making major capital investment for pollution control equipment that is demonstrated, proven technology provided the correct regulatory approvals are in place.

The attached memorandum provides additional background and context with regard to EPA's current Title V permit reopening action. By reaching out to you, I hope to reinvigorate a cooperative relationship between Region 5 and Veolia. Thank you for your attention to this matter. If you have any questions, please give me a call.

Sincerely,



Doug Harris
General Manager